

**Question referred**

Does the definitive decision on the carrying on of operations at an authorised or already operational landfill site taken on the basis of Article 14(b) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste <sup>(1)</sup> constitute a consent as referred to in Article 1(2) of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment? <sup>(2)</sup>

<sup>(1)</sup> OJ 1999 L 182, p. 1.

<sup>(2)</sup> OJ 1985 L 175, p. 40.

**Reference for a preliminary ruling from the Hof van Cassatie van België lodged on 10 March 2011 — Inno NV v Unie van Zelfstandige Ondernemers VZW (UNIZO), Organisatie voor de Zelfstandige Modedetailhandel VZW (Mode Unie), Couture Albert BVBA**

(Case C-126/11)

(2011/C 152/26)

*Language of the case: Dutch*

**Referring court**

Hof van Cassatie van België

**Parties to the main proceedings**

*Applicant:* Inno NV

*Defendant:* Unie van Zelfstandige Ondernemers VZW (UNIZO), Organisatie voor de Zelfstandige Modedetailhandel VZW (Mode Unie), Couture Albert BVBA

**Question referred**

Must Directive 2005/29 <sup>(1)</sup> of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22), and in particular Articles 1, 2(d), 3(1) and 5 thereof, be interpreted so that those articles are incompatible with national legislation such as the first and third paragraphs of Article 53(1) of the Wet van 14 juli 1991 betreffende de handelspraktijken en de voorlichting en bescherming van de consument (Law of 14 July 1991 on commercial practices and consumer information and protection), which, for the sectors mentioned in Article 52(1) of that Law, prohibits traders, during the restricted periods of 15 November to 2 January and 15 May to 30 June, and regardless of the place or the means of

communication used, from making announcements of price reductions, as well as announcements suggestive of a price reduction, as referred to in Article 42 of that Law, and also from making announcements and suggestions of price reductions before the commencement of a restricted period which would take effect during that restricted period, even though the measure concerned, despite the dual objective put forward by the national legislature, namely, on the one hand, the protection of the interests of consumers and, on the other hand, the regulation of the competitive relations between traders, in reality serves to regulate the competitive relations between traders and, considering the other guarantees provided by the legislation, does not contribute effectively to consumer protection?

<sup>(1)</sup> OJ 2005 L 149, p. 22.

**Reference for a preliminary ruling from the Arbeidshof te Antwerpen (Belgium) lodged on 11 March 2011 — Aldegonda van den Booren v Rijksdienst voor Pensioenen**

(Case C-127/11)

(2011/C 152/27)

*Language of the case: Dutch*

**Referring court**

Arbeidshof te Antwerpen

**Parties to the main proceedings**

*Applicant:* Aldegonda van den Booren

*Defendant:* Rijksdienst voor Pensioenen

**Questions referred**

1. Is Article 52(1) of the koninklijk besluit van 21 december 1967 tot vaststelling van het algemeen reglement betreffende het rust- en overlevingspensioen voor werknemers (Royal Decree of 21 December 1967 on the general regulation of the retirement and survivor's pension scheme for employed workers), under which a survivor's pension is reduced as a result of the increase in an old-age pension awarded under the Wet van 31 mei 1956 inzake een algemene ouderdomsverzekering (Law of 31 May 1956 on general old-age pensions) pursuant to the implementation of the equal treatment of men and women by the Law of 28 March 1985, compatible with Community law, in particular with Article 46a of Council Regulation (EEC) No 1408/71 <sup>(1)</sup> of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community;

2. Is Article 52(1) of the koninklijk besluit van 21 december 1967 tot vaststelling van het algemeen reglement betreffende het rust- en overlevingspensioen voor werknemers (Royal Decree of 21 December 1967 on the general regulation of the retirement and survivor's pension scheme for employed workers) compatible with Community law, in particular with Articles 10 and 39 to 42 of the Treaty of 25 March 1957 establishing the European Community, if that provision is interpreted in such a way that an old-age pension awarded under the Wet van 31 mei 1956 inzake een algemene ouderdomsverzekering (Law of 31 May 1956 on general old-age pensions) is to be included under the retirement pensions or equivalent benefits referred to in that provision, and in case of incompatibility, should Article 52(1) of the koninklijk besluit van 21 december 1967 then be disapplied?

(<sup>1</sup>) OJ, English Special Edition, 1971 (II), p. 416

**Reference for a preliminary ruling from the Corte Suprema di Cassazione (Italy) lodged on 21 March 2011 — Criminal proceedings against Demba Ngagne**

(Case C-140/11)

(2011/C 152/28)

*Language of the case: Italian*

**Referring court**

Corte Suprema di Cassazione

**Party to the main proceedings**

Demba Ngagne

**Questions referred**

1. Must Article 7(1) and (4), Article 8(1), (3) and (4), and Article 15(1) of Directive 2008/115/EC (<sup>1</sup>) be construed as precluding a Member State from ordering a non-national who is unlawfully present on its territory to depart from that territory when it is not possible to proceed by means of deportation, whether immediate or following detention, thereby reversing the priorities and the order of procedure laid down in those provisions?
2. Must Article 15(1), (4), (5) and (6) of Directive 2008/115/EC accordingly be construed as precluding a Member State from providing, as a consequence of unjustifiable non-cooperation on the part of a non-national in his own voluntary return, and on that ground alone, that that person is to be charged with an offence punishable by a custodial sentence (imprisonment) which is (up to 10 times) longer than the period of pre-deportation detention, which is no longer possible, or objectively impossible, to apply?
3. Can Article 2(2)(b) of Directive 2008/115/EC be construed, in the light of Article 8 of that directive and the common policy areas identified, in particular, by Article 79 TFEU, as

meaning that it is sufficient for the Member State to decide to categorise as a crime the non-national's non-cooperation in his own voluntary return, because the directive does not apply?

4. Must, on the contrary, Article 2(2)(b) and Article 15(4), (5) and (6) of Directive 2008/115/EC be construed, in the light of Article 5 of the ECHR, as precluding a non-national who is unlawfully present on the national territory and in whose case pre-deportation detention is objectively impossible, or no longer possible, from being subjected to a spiral of voluntary departure orders and restrictions on his freedom, the legal basis for which is the fact that his disobedience of those orders is categorised as a punishable offence?
5. In conclusion, is it possible to assert — in the light of recital 10 [in the preamble to Directive 2008/115/EC], the earlier version of Article 23 of the Convention implementing the Schengen Agreement, the recommendations and guidelines referred to in the preamble to Directive 2008/115/EC, and Article 5 of the ECHR — that Article 7(1) and (4), Article 8(1), (3) and (4), and Article 15(1), (4), (5) and (6) confer the status of a binding rule on the principles that the restriction of freedom for the purposes of repatriation falls to be regarded as an extreme measure (*extrema ratio*) and that no custodial measure is justified where it is linked to a deportation procedure in relation to which there is no reasonable prospect of return?

(<sup>1</sup>) OJ 2008 L 348, p. 98.

**Reference for a preliminary ruling from the Södertörns Tingsrätt (Sweden) lodged on 21 March 2011 — Torsten Hörnfeldt v Posten Meddelande AB**

(Case C-141/11)

(2011/C 152/29)

*Language of the case: Swedish*

**Referring court**

Södertörns Tingsrätt

**Parties to the main proceedings**

*Applicant:* Karl Torsten Hörnfeldt

*Defendant:* Posten Meddelande AB

**Questions referred**

The Tingsrätt asks the Court of Justice of the European Union to answer the following questions concerning the interpretation of the general principle of law on the prohibition of age discrimination and of Article 6 of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation: (<sup>1</sup>)